

Reporting Period: July 98 – September 98

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Communication of the FCC**

The FCC issued its first Communication (i.e., non-compulsory guidelines in the application of the Competition Act) on tariff structure. Tariff structure, that is, general indications and a standard basis to compute or evaluate costs of products or services, can be justified on grounds of economic efficiency where (i) the structures are limited to formula to compute costs and determine prices, (ii) their aim is to exchange information amongst companies on how to compute costs, the parties remaining free to determine the final purchase price and to grant discounts and (iii) they do not contain clear information as to the way to fix final prices and other conditions. By contrast, tariff structure is not justified when it (i) imposes on the parties a stringent cost computation system, (ii) imposes or strongly recommends discounts and/or final prices or (i) clearly indicates to the parties the exact behaviour of their competitors in determining final prices.

- **FCC Report**

The FCC issued its report on competition law developments for the period from April 1998 through July 1998 (DPC 1998/2).

- **Notification form**

The FCC has finalised its merger notification form, which is based on the EU Form CO. The form is divided into two parts: the first contains general information on merger control and the second part contains a list of information to be provided by the undertakings. Although not compulsory, the form can already be used to notify mergers to the FCC.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Newspapers**

On August 12, 1998 the Federal Supreme Court denied the right of the *Association des Amis du Journal de Genève* to appeal against the FCC's decision which cleared the formation of the joint venture Le Temps SA. The Federal Supreme Court based its decision on ordinary rules on administrative procedure, which implies that, under certain circumstances, third parties may appeal against a decision of the FCC in a merger case (which was an highly disputed issue under the Competition Act).

- **Information Technology**

The FCC cleared the merger "Thomson-CSF" by considering that no markets were affected (DPC 1998/2, p. 274).

- **Construction**

The FCC cleared the acquisition of Stamm-Gruppe by Batigroup Holding AG (DPC 1998/2, p. 277).

- **Postal services**

The FCC cleared the acquisition by Swiss Post Office of 50% of the shares in the Berner Vertragungs Organisation AG (DPC 1998/2, p. 265).

ANTI-COMPETITIVE PRACTICES

- **Telecommunications**

The FCC concluded its investigation into Swisscom's refusal to install its new telecommunication system called "Centrex" to some of its clients. Swisscom's refusal was based on the fact that some clients were using other providers' materiel to run the system. The FCC considered that Swisscom's behaviour was an abuse of its dominant position. However, as Swisscom agreed to review its practice, (and guarantee equal treatment and system compatibility), the FCC and Swisscom entered into an amicable settlement, the FCC renouncing to render any formal decision.

- **Books**

The FCC opened a preliminary investigation into price fixing agreements on the book market. The FCC confirmed that price fixing agreements are, as a rule, presumed to eliminate effective competition and, therefore, prohibited. The investigation, which is directed against all publishers and distributors which are parties to existing price fixing agreements, aims at assessing whether the illegal character of the agreements can be confirmed.

- **Music score**

The Swiss Federal Council upheld the FCC's decision of September 1st, 1997 prohibiting price fixing agreements in music scores. The Swiss Federal Council considered that no public interests were at stake.